

1 proceed a case with the appeal?

2 A. Right.

3 Q. And if your appellate
4 professional/business practice is the way you
5 characterize your trial practice, would it be correct
6 to assume before filing the notice you would have
7 gotten at least some retainer?

8 A. No, not on the appeal. I knew I had to
9 file to preserve his appellate rights. But I also
10 know I never received any funds on the appeal.

11 Q. So you remember, then, about Bruce?

12 A. That I'm absolutely certain.

13 Q. And you knew he was indigent?

14 A. Correct.

15 Q. I take it you also knew he was counting on
16 or hoping that whoever they were, whether they're
17 blood or -- whoever, his people were supposed to pony
18 up or rally the money?

19 A. Correct.

20 Q. But just as when we're retained, of
21 course, whether it's father for a juvenile at times
22 or running buddy for an arguable drug ne'er-do-well,
23 we represent clients, not the dollar, right?

24 A. Correct.

25 Q. And you knew Bruce wanted an appeal?

1 A. Correct.

2 Q. Then when you filed the appeal have you
3 had a chance to look back at the docketing statement
4 or the docket of the appellate number that was
5 assigned to this appeal, by chance?

6 A. You mean whatever was on the -- I reviewed
7 the Internet. I didn't review a docket statement,
8 per se, but the Internet would have had pretty much
9 what's on the docket statement.

10 Q. Do you remember what the expected or
11 routine filing fee was for a Notice of Appeal back at
12 the time?

13 A. No, I don't. I think it is like \$85 now.
14 I don't know if it was less.

15 Q. I take it from your practice back then you
16 knew that you were going to face a filing fee when
17 you walked over there with the Notice of Appeal?

18 A. Correct.

19 Q. Would you have walked over? Would it have
20 been something you would have done, throw a bunch of
21 stuff in a brief case for a day's work in the
22 courthouse rather than sending help over to do this?

23 A. Could have been either way. I did and
24 still do file a lot of my things. But on the same
25 token, sometimes I'll have someone else do it. I

1 have no independent recollection if I actually filed
2 this or not. I wouldn't doubt it.

3 Q. I notice from looking at the court of
4 appeals you can tell, can you not, from this court
5 document -- point out for me, by the way, Bryan, and
6 I'm sure in a general manner you assume we're showing
7 the real stuff, but if you ever see something I'm
8 showing you that doesn't look copacetic can you let
9 me know?

10 A. Sure.

11 Q. This notice appears to be file stamped in
12 the way you would imagine or be familiar with
13 documents filed in the First District Court of
14 Appeals; is that right?

15 A. The only error I would see on this
16 document is it shows a copy filed on July 12th but
17 the prosecutor receiving it the 11th. So the
18 prosecutor's stamp must have been off because it
19 wasn't served to the prosecutor until after it was
20 filed. But other than that everything is accurate on
21 it.

22 Q. Here's another copy of this. Have you
23 seen any of the pleadings in Mr. Woods' habeas case?
24 Did Mr. Bodine show you any?

25 A. I don't recall. I don't think I did.

1 Q. You know that's where this litigation lies
2 now?

3 A. Yes.

4 Q. Federal District Court. Same notice of
5 appeal. Attached to which, under appellate number
6 96545. Okay. That was -- if you can tell from these
7 documents, that is the appellate court case number
8 being assigned to the appeal of trial court case
9 number 345?

10 A. Correct.

11 Q. And the very first entry there indicates a
12 waiver of costs due to, what at least the docket
13 reads POV.AFF. Would you understand that to be short
14 for Poverty Affidavit?

15 A. That would be my understanding.

16 Q. So the very first indication there is
17 no-deposit-required-poverty affidavit, Bruce Woods?

18 A. Correct.

19 Q. Would it be correct that that entry would
20 indicate -- at least on its face that would indicate
21 that an affidavit of indigency was being filed for
22 Mr. Woods, right?

23 A. That would appear to indicate that, yes.

24 Q. I saw no copy of that in your file?

25 A. I can tell you I never -- I have no

1 recollection of ever even receiving a poverty
2 affidavit from Mr. Woods.

3 Q. I can represent to you for the, kind of,
4 the follow-up topic/questions that those working for
5 Mr. Woods who have inspected the appellate file under
6 545 saw no poverty affidavit in the Court's own file.
7 Do you have a recollection -- if we assume there is
8 no affidavit in the court file corroborates your
9 recollection that you never obtained such affidavit
10 at the time you filed the notice of appeal; is that
11 right?

12 A. Correct.

13 Q. Nor at any other time did you ever obtain
14 a poverty affidavit?

15 A. No, not to my recollection.

16 Q. Do you have a recollection of paying?
17 Would you have done that in your practice? Would you
18 have fronted a fee for a client?

19 A. Sure.

20 Q. Did you front the fee there?

21 A. Not -- if there was a poverty affidavit
22 then there wouldn't have been a fee. I'm looking at
23 this I can't tell if I would have. It doesn't look
24 as if there would have been a fee for that. I can
25 check my cancelled checks from July of '96.

1 Q. In your practice back then are you saying
2 that you would have been willing to front a filing
3 fee even though you hadn't yet gotten a dime towards
4 the appellate representation fee?

5 A. If that was the only way to preserve their
6 rights, then sure. I mean, eating 60 or \$85 wouldn't
7 have been the end of the world.

8 Q. I guess, you also mentioned, at least back
9 then it wouldn't have been uncommon for Mr. Woods to
10 have remained in the county justice center jail for
11 as long as a month after a trial level sentence?

12 A. Correct.

13 Q. So it would have been available to you to
14 get an affidavit signed?

15 A. If he was there for the thirty days. I'm
16 sure he would have been there for a significant
17 period of time.

18 Q. Do you have a recollection of having a
19 conversation with an appellate clerk to perfect this
20 appeal without payment knowing that your intention as
21 of July 12th, of course, was to proceed as retained,
22 not appointed, a conversation designed to make sure
23 that you got a notice of appeal in within 30 days?
24 Because the Notice of Appeal would have been filed
25 with the trial system where you probably would have

1 known more of the clerks, I assume, than at the
2 appellate court?

3 A. I know now they are actually filed in the
4 court of appeals. And I don't know when -- if that
5 was the case back in 1996. Even though the rule says
6 to file with the trial court clerk, now we file them
7 in the court of appeals.

8 Q. It would appear from this copy, at least
9 it was stamped in as the common pleas clerk?

10 A. And to be honest, I think they still have
11 that stamp when you go up to that floor. But I have
12 no recollection of having any conversation with the
13 clerk.

14 Q. Have you ever been able to do that to make
15 sure time isn't missed?

16 A. No, I have never -- I don't believe I have
17 ever discussed a situation like that with a clerk.

18 Q. So if you had no such discussion, and if
19 we assume for the sake of discussion, I myself didn't
20 do the work of copying the court of appeals file, but
21 I have no reason to question the conclusion, there is
22 no affidavit in there?

23 A. I wouldn't question that conclusion
24 either. I know of no affidavit. I can tell you I
25 did not obtain an affidavit of -- poverty affidavit

1 for him.

2 Q. That first line indication on the very
3 first entry of the appellate docket case number 96545
4 is July 12th, the date of which we see from the other
5 document the Notice of Appeal was filed; is that
6 right?

7 A. Correct.

8 Q. There were other documents, I'm not sure
9 if it is attached here in that court of appeals case
10 when it's eventually dismissed, that indicate there
11 are no fees being collected. Again, these are coming
12 out of court file so I am not going to mark them here
13 to ask you to -- you know, we'll get those in in a
14 more appropriate way. But this document bears the
15 same appellate case number, does it not?

16 A. Yes, it does.

17 Q. 545. And it indicates poverty affidavit
18 status?

19 A. Correct.

20 Q. And hence, there's no fees being collected
21 on that case number?

22 A. Correct.

23 (Exhibit 3 was marked for identification.)

24 Q. I'll go ahead and mark these. I'm going
25 to mark this as Exhibit 3, a document stapled on the

1 upper left that is four pages in number, also, in
2 connection with a different pleading bears Exhibit D.
3 Do you see that?

4 A. Yes.

5 Q. Now we have marked it Exhibit 3?

6 A. Yes.

7 Q. And it is four 8 and a half by 11 pages
8 first is the Notice of Appeal we've discussed?

9 A. Right.

10 Q. The second appears to be a
11 computer-generated docket statement, appellate case
12 number 96545?

13 A. Yes.

14 Q. And then eventually that case is dismissed
15 and this would appear to be the entry of Dismissal of
16 Appeal, December 5, '96?

17 A. Correct.

18 Q. In appellate case number 545, as you stand
19 out the computer-generated -- before I move on I'm
20 going to mark as Exhibit 4 what would be a -- looks
21 like a different run, if you will, of a
22 computer-generated docket related to court costs in
23 connection with appellate 96545. Stapled on the
24 upper left is a two-page Exhibit 4, and I'll mark
25 that again and put it on the second page. And that

1 seems, if I am correct, to be kind of the bookkeeping
2 end of the appellate court clerk system where they
3 are running what would otherwise have been the fees
4 associated with 96545, none of which are collected
5 but maybe just to balance out their books they
6 indicate what the costs were but not as collected
7 because the poverty affidavit is also indicated on
8 that sheet; is that correct?

9 A. Correct.

10 (Exhibit 4 was marked for identification.)

11 Q. That's marked Exhibit 4. Now, on the
12 other form of the docket that has the docket entries
13 in connection with appellate case 545: When you
14 first filed did you look back at enough of this to
15 recall that when you first filed the Notice of Appeal
16 you didn't file a criminal docketing statement?

17 A. Correct.

18 Q. Do you know why?

19 A. If I recall, it had to do with the
20 financial arrangements with the court reporter.
21 Because they have to sign it before you get it and
22 file it. And I remember having more than one
23 conversation with the court reporter about how much
24 money she wanted up front, and so forth. And
25 eventually I believe the docket statement was filed

1 but it was made contingent upon -- she wasn't going
2 to do anything until a certain amount of money was
3 paid up front on it. That's really all I recall
4 about the docket statement. And then there are also
5 times, which could have been the case here, where I
6 will not file a docket statement right at the same
7 time that a Notice of Appeal is filed because a
8 Notice of Appeal obviously had the time limitations
9 on it, and I haven't got a docket statement back from
10 the court reporter so there might be a few days'
11 lapse in there before the docket statement gets
12 filed.

13 Q. Eventually the entry we can see on the
14 docket indicates an order to show cause item about
15 six down dated 7/30/96?

16 A. Correct.

17 Q. Which, if I can show you this document,
18 looks like an order in the form of a letter addressed
19 to you at your Seventh Street address?

20 A. Correct.

21 Q. And the show cause basically is, where is
22 our criminal docketing statement?

23 A. Correct.

24 Q. If I indicated to you that we didn't find
25 this piece of paper in your file but rather we found

1 this piece of paper in the appellate clerk's file,
2 why would this not have been in your Bruce Woods
3 file?

4 A. If I received it it should have been in
5 this. I don't know why it was not in there.

6 Q. In the ministerial duties of probably the
7 court's administrator they are telling you on July
8 30th, get this thing in this seven days, and perhaps
9 true to your practice and probably elsewhere while
10 they are not going to be totally ironclad on that,
11 you eventually submitted a document statement on
12 August 12th?

13 A. Correct.

14 Q. You're remembering submitting a docketing
15 statement?

16 A. Yes.

17 Q. Our docket we're referring to indicates.
18 Refresh your recollection. Does that look like a
19 copy of the docketing statement you submitted for
20 Mr. Woods?

21 A. Yes.

22 Q. And I'll show you the same thing on an 8
23 and a half by 14. That copy came out of the
24 appellate court clerk's file. So let me use this one
25 and I will mark that as Exhibit 5. This is the sheet

1 true to all docketing statement where you didn't even
2 have some indication from the clerk of courts
3 regarding the preparation of the transcript; is that
4 right? I mean, I'm sorry, the court reporter?

5 A. Yes, it has to be signed by the court
6 reporter.

7 Q. So on August 12th, after receiving a week
8 and a half or so earlier, I suppose, the letter from
9 the court of appeals you're affixing your signature
10 to this docket statement on August 12th, right?

11 A. It's hard to read my own writing.

12 Q. That one comes out --

13 A. Yeah, that looks like August 12.

14 (Plaintiff's Exhibit 5 was marked for
15 identification.)

16 Q. The court reporter, whose name I can't
17 make out the first name. Is that -- do you recognize
18 that?

19 A. Gail.

20 Q. Oh, Gail. She, too, is affixing a
21 signature on 8/12 of '96?

22 A. Correct.

23 Q. And in this docketing statement, you're
24 indicating, of course, you need the transcript. You
25 can't very well do this type of appeal without the

1 whole transcript, right?

2 A. Correct.

3 Q. She's indicating on August 12th, she's
4 saying if she gets twelve hundred dollars, she's
5 indicating -- let me back this up. She's indicating
6 the transcript is likely to be 600 pages, which she
7 could produce, if and only if she receives a twelve
8 hundred dollar deposit within a month by 9/12 of '96?

9 A. Correct.

10 Q. And were she to receive the deposit by
11 9/12 of '96 she anticipates in her certification she
12 could generate the transcript for appellate review by
13 November 12 of '96?

14 A. Correct.

15 Q. That's marked as 5 for purposes of the
16 depo. That appears from the appellate court file to
17 have generated a fairly routine order, again, from a
18 judge or maybe their court administrator. Are you
19 familiar with events set up, a deadline for the
20 filing of the record and they have set up a
21 anticipatory briefing schedule, assuming the record
22 will be filed and perfected by the deadline. Is that
23 their normal practice?

24 A. That's their normal practice, yes.

25 Q. Do you remember that actually happening

1 here, that you got that notice?

2 A. I don't remember that. I'm sure I must
3 have but I don't recall that.

4 Q. I'll show you a couple more documents
5 that, again, were copied by those working for
6 Mr. Woods from the first appellate district's file,
7 96545, this dated August 30th, and then what appears
8 to be a commensurate post-card type notice to
9 counsel. Were you familiar with those?

10 A. Yes.

11 Q. You've been in receipt of those from the
12 court of appeals?

13 A. Yes.

14 Q. And this on one 8 and a half by 11 appears
15 to be copied, probably two different post-card
16 notices to you since you were the named counsel on
17 the Notice of Appeal, and to the prosecutor's office;
18 is that right?

19 A. Correct.

20 Q. And the post-card notices list, if you
21 will, the dates that appear in this court order dated
22 August 30th from the appellate court; is that right?

23 A. Right.

24 Q. And in those documents do we see the
25 indication they expect the record to be filed on

1 11/19 of '96, and from that point forward they put a
2 briefing schedule out?

3 A. Correct.

4 (Exhibit 6 was marked for identification.)

5 Q. I'm going to mark as Exhibit 6, the 8 and
6 a half by 11 Xerox of it, and I think you have
7 indicated you're familiar with the post-card
8 notifications coming out of the appellate clerk of
9 courts?

10 A. Yes, I am.

11 Q. I take it normally that would have gotten
12 stuck in your Bruce Woods file?

13 A. Should have been, yes.

14 Q. Did you remember seeing that when you
15 looked at the file to refresh your recollection?

16 A. No, did not.

17 Q. I could represent that we didn't notice
18 these documents in your file. Does that suggest to
19 you the possibility you generated another Bruce Woods
20 file?

21 A. Specific one for the appeal, I would doubt
22 it. But the one thing I was surprised when I was
23 digging out the file is that there was not more -- I
24 expected to be more to the Bruce Woods file than what
25 I was able to find. So would I expect there to be a

1 separate appellate file, no. Would I expect that
2 there would be more to the file than what there was
3 in light of the trial and so forth? Yes, I would
4 have expected that.

5 Q. I take it if you are like most felony
6 level trial practitioners, a lot of your cases plead
7 out, and those that don't that go to trial -- and
8 that's what you're suggesting here. You thought
9 there might have been more in it just because it was
10 a full blown jury trial?

11 A. A typical jury trial I'm going to have a
12 big -- I guess they call them Read-well files that
13 may have three or four different folders in there
14 and, like I say, I was surprised that that was all
15 the file I had for Bruce Woods. So there may very
16 possibly been another file but it wouldn't have
17 necessarily been a separate appellate file.

18 Q. In the context now of recognizing there
19 might have been another file, coupled with, I think a
20 comment you made a bit ago about whether you might
21 have fronted the filing costs on the appeal and you
22 referenced you might be able to check -- review your
23 old check register or cancelled checks?

24 A. I should still have, hopefully, have '96
25 somewhere.

1 Q. Even though your business has changed, at
2 least the practice has changed?

3 A. Correct.

4 Q. Since the Seventh Street setup you had,
5 the partnership?

6 A. Correct.

7 Q. As you sit here today it is your best
8 sense that you have personally maintained these types
9 of records, the check, returned check or check
10 register and any other files, client files from that
11 era?

12 A. That's not something that would come out
13 of the partnership account. That was primarily for
14 business expenses.

15 Q. The overhead of the rent, the phone, the
16 lights, that kind of thing?

17 A. Anything that related to my clientele
18 would have come out of my account. So if, in fact, I
19 did write a check for this, that would be in my
20 records.

21 Q. So your partnership was formed not so much
22 to share profit as to share overhead?

23 A. Correct. We eventually, I think for a
24 year or two, '98 or '99, or probably '99 to 2000, we
25 did try putting the profits together. That did not

1 work out too well. So at this time I can tell you
2 definitely my fee would have gone to me. My expenses
3 related to my cases would have been paid by me. But
4 things like rent, electric, so forth, would have been
5 paid out of, probably, a common account.

6 Q. Do you recall whether you would have had
7 any correspondence with Mr. Woods for those with whom
8 you were communicating about the appellate fee?

9 A. I would have thought, and I did expect
10 that I would have found something regarding
11 communications with Mr. Woods but there was not any
12 in the file that I have. I would not have written
13 correspondence with any of the third parties.

14 Q. Would you be able, in terms of time and
15 commitment to a former client, to represent that you
16 would be willing to check, to review your cancelled
17 checks or check register?

18 A. Most certainly.

19 Q. And to personally determine to your best
20 ability whether there might be more Bruce
21 Woods-related documents in your files?

22 A. Sure.

23 Q. I would appreciate that. Can you give me
24 a sense of how long that might take you since we're
25 answering up to a federal magistrate in terms of this

1 case right now?

2 A. Two weeks.

3 Q. That would be great. Appreciate it.

4 A. So I'll check my cancelled checks from --
5 it would have been in July of 1996.

6 Q. Right.

7 A. And then review the other closed files for
8 any other files I might have on Mr. Woods?

9 Q. Right. In the event that -- it would
10 sound like from what we discussed, Bryan, if you
11 might have generated a different preliminary
12 appellate file, for lack of my word, not yours.
13 Obviously, post the sentencing date of 6/14/96.

14 A. I will check on that.

15 Q. Tell me again -- maybe you mentioned it
16 earlier -- what did you look at to prep up for the
17 depo or to refresh your recollection about Mr. Woods'
18 case that alerted you to the fact that the Notice of
19 Appeal had gone in under the dismissed case number,
20 not the conviction case number?

21 A. Because when I learned that the issue was
22 the case was not appealed, and while at the time it
23 didn't dawn on me that what I did as far as the
24 appeal. And I was looking through the file and I
25 found a Notice of Appeal, and said, there was a

1 Notice of Appeal filed on this. There was an appeal
2 filed, and so forth. And then as I looked closer
3 that's when I came to realize that it was filed under
4 the incorrect -- that there were two indictments
5 involved in that case.

6 Q. Some of that information you can get on
7 the clerk's web site now in terms of tracking the
8 different numbers. Even if some of the these --
9 appellate number 545 documents weren't in the Bruce
10 Woods file you could see some of that on the screen,
11 I take it?

12 A. Sure. I believe I probably did a search
13 under the civil docket which brings up the court of
14 appeals cases for Bruce Woods, and reviewed it in
15 that manner.

16 Q. Eventually in appellate number 96545 the
17 appellate clerk of courts records would have revealed
18 that -- in keeping with your criminal docketing
19 statement and the Court's subsequent entry of late
20 August indicating deadline for perfection of the
21 record and the prospective briefing, the appellate
22 docket would reveal that the common pleas clerk of
23 courts did submit what they had available as a matter
24 of record in early November. Can you see those
25 entries around November 7?

1 A. Yes. Their documents would have been on
2 11/7, the transcript of docket and journal entry is
3 filed. That's the common pleas court submitting
4 everything they have to the court of appeals.

5 Q. The motions, the transcript of docket, not
6 the transcript of trial, is the common pleas level
7 docket?

8 A. Correct.

9 Q. Other than what you have remarked upon so
10 far regarding conversations about the finances
11 relative to being retained for the direct appeal, are
12 there any other recollections you have in a sense, at
13 least on the mile markers of memory? You've got an
14 early summer conviction, mid summer, at least
15 perfection of the Notice of Appeal. Now we're into
16 late fall, and the case is still alive, at least
17 under this case number. What, if you remember, if
18 anything, is going on with you and anybody about
19 getting paid for the court reporter, at least?

20 A. I recall vaguely conversations with people
21 who had made promises that they were going to get the
22 funds paid, but the funds were never received. That
23 is really all that I recall regarding that time
24 period, what was going on then. I just have a
25 recollection about talking to people. Yeah, we're

1 going to get that taken care of, but it did not
2 happen.

3 Q. Would I be correct that in -- let me just
4 ask you, the way you would have run your business
5 back then with respect to the debt due to the court
6 reporter as well as your expectation of a fee for
7 your time and expertise on the appeal, would you have
8 expected a paying appellate client to give you both
9 your appellate fee and the fee for the transcript
10 that you would, in turn, then run through your trust
11 account and pay the court reporter directly?

12 A. Yes, that's how -- that would be my
13 expectation.

14 Q. You wouldn't have asked nonprofessional
15 client types, go track Gail down and give her a check
16 for twelve hundred dollars?

17 A. I doubt it. I have done it in the past
18 with people where, for whatever reason they want a
19 copy of the transcript. But I don't want to make the
20 commitment of ordering and be financially on the hook
21 for it and tell them, not necessarily for an appeal
22 but for other reasons that they may need it or I may
23 need it, tell them to contact the court reporter and
24 make arrangements to get it. Because their practice
25 is that if I contact the court reporter they are

1 going to generate it and they're going to expect that
2 I pay it.

3 Q. A phone call alone is the lawyer's word,
4 I'll pay you for your time for the reporter?

5 A. Right. But in this case, that more than
6 likely would not have happened. And I don't know why
7 I would have told them.

8 Q. Having gone so far to have Gail, the
9 reporter, affix her signature on the same docket
10 statement you signed, would it be your recollection
11 you wanted to run those funds through you?

12 A. Correct. And I believe why that was put
13 on the docket statement was -- about her being
14 contingent upon the deposit was, she had asked me if
15 I was going to guarantee these funds. And I was not,
16 obviously, not going to guarantee them. I have to
17 get them from the client's family.

18 Q. The appellate docket reflects that in
19 early November, around the 7th the common pleas clerk
20 is filing in portions of the record they have
21 available.

22 A. Yes.

23 Q. And from your public experience, I trust
24 you realize the clock is ticking, right?

25 A. Correct.

1 Q. Do you have a recollection of receiving
2 the entry of dismissal?

3 A. No, I don't.

4 Q. Do you have any reason to doubt that --

5 A. I have no reason to doubt. I don't think
6 there's ever been a time I did not receive what the
7 court of appeals said they sent me. I have no reason
8 to doubt it. I just don't recall receiving it.

9 Q. I think that would be the fourth page of
10 what was marked Exhibit 3 to your depo, is the order
11 saying by December 5th there has been no
12 follow-through, no prosecution of the appeal with
13 perfection of the record. It's over.

14 A. Correct.

15 (Exhibit 7 was marked for identification.)

16 Q. And then what I will mark as Exhibit 7
17 would appear to be another copy of a post card
18 delivered to you as counsel of record indicating
19 that, in fact, the appeal had been dismissed?

20 A. Correct. And now that I think of it, this
21 is probably -- the post card is what I would have
22 received and not copy of the actual order. If they
23 were operating under the same manner they are now,
24 you don't actually get a copy of the order, you get a
25 copy of the cards.

1 Q. I think many clerks went to that. They
2 are saving money just sending those out, those
3 computer-generated postcards?

4 A. Correct.

5 Q. Postage and paper both. Do you have a
6 recollection of learning one day, the light goes on,
7 that nothing happened. In fact, the court said
8 nothing happened and dismissed it?

9 A. I don't recall that.

10 Q. Do you have a recollection in the time
11 that Bruce Woods' case has come back under your radar
12 screen because of this litigation, up right through
13 to this very question, ever, kind of log it in the
14 back, that the appeal you started with the Notice of
15 Appeal was either over or needed to be looked into or
16 something?

17 A. I'm sure I would have. I would have had
18 to have, I'm sure, received some type of notice but I
19 don't have an independent recollection of receiving
20 the card or how it was that I learned that that had
21 taken place.

22 Q. Have you ever had a case where you were
23 appointed as appellate lawyer and then somebody
24 bumped you off as retained counsel?

25 A. No, but I have had vice versa where I have

1 been retained to represent somebody on appeal when
2 they originally had appointed counsel.

3 Q. That's what happened to you here at the
4 trial level. The initial docketing for both 345 and
5 1386 indicate that Mr. McKevely was appointed
6 counsel, so apparently sort of bumped him off when
7 you were retained?

8 A. Correct.

9 Q. So this appeal, since Bruce was indigent
10 in your estimate, although he did, obviously, have
11 people representing to you that they would pay you to
12 represent him on appeal, when they eventually didn't,
13 there seems not in the court docket to have been any
14 effort invested to switch him into indigency status?

15 A. Correct.

16 Q. Which I trust you know could have been
17 done?

18 A. Correct.

19 Q. Would have cost you some time?

20 A. Correct.

21 Q. Either there was a poverty affidavit that
22 escapes your recollection and doesn't appear in the
23 file, but even without that July 12th indication, it
24 would have been possible to obtain an affidavit of
25 indigency from Mr. Woods?

1 A. Correct.

2 Q. And make it clear to the court of appeals
3 you were not being retained and he needed appointed
4 counsel?

5 A. Correct.

6 Q. You knew how to do that back then?

7 A. I had never had that situation come up at
8 that particular time, but now I certainly understand
9 how to deal with that situation and it should have
10 been done then, also.

11 Q. You've mentioned at least one occasion or
12 more, whatever, you've been retained, in at least my
13 phrase, bumped off appointed counsel for appeal?

14 A. Correct.

15 Q. At that stage if it is an inmate client
16 who, in fact, herself or himself is indigent, then
17 you pick up the case as retained appellant after the
18 transcript is generated at taxpayer cost?

19 A. Correct.

20 Q. Do you have any discrete recollections of
21 what you knew at the time to be sort of the final
22 interaction with the people who had talked about
23 paying you, or did it just end with a whimper or a
24 bang -- let me ask you.

25 A. A whimper. It was just -- I remember a

1 series of telephone calls of talking to people, and,
2 you know, the money will be down there next week.
3 We'll get it taken care of next week. And then it
4 just sort of faded away as far as not receiving any
5 calls anymore and no funds arriving.

6 Q. But whoever they were -- and I appreciate
7 it was eight years ago -- it wasn't just once or
8 twice I think you just put it. It was kind of
9 if-come. They kept you thinking, kept telling you
10 they were going to muster the money?

11 A. Correct.

12 Q. But there wasn't any grand finale, so to
13 speak?

14 A. No.

15 MR. MEYER: Can we have one minute?

16 (A recess was taken from 2:20 to 2:22.)

17 MR. MEYER: Thank you. Nothing further.

18 MR. BODINE: I have nothing.

19
20
21 (Signature waived.)

22 BRYAN PERKINS
23 - - -

24 DEPOSITION CONCLUDED AT 2:22 P.M.
25 - - -

C E R T I F I C A T E

COMMONWEALTH OF KENTUCKY :
 : SS
 COUNTY OF CAMPBELL :

I, Sherry L. Music, the undersigned, a duly qualified and commissioned notary public within and for the Commonwealth of Kentucky, do hereby certify that before the giving of his aforesaid deposition, BRYAN PERKINS was by me first duly sworn to depose the truth, the whole truth and nothing but the truth; that the foregoing is the deposition given at said time and place by BRYAN PERKINS; that said deposition was taken in all respects pursuant to stipulations of counsel; that I am neither a relative of nor employee of any of the parties or their counsel, and have no interest whatever in the result of the action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office at Newport, Kentucky, this ____ day of _____, 2004.

My commission expires: Sherry L. Music
 February 22, 2007 Notary Public

Ace Reporting Services (513) 241-3200
 30 Garfield Place, Suite 620 Cincinnati, Ohio 45202

4c727fc3-f85d-4a22-9b9c-4cd6e8b1127b

4,000.00/1500.00

B9600345

Kelly Ward
Rushmore Rogers

Bruce Woods #341825

3341 Bonaparte

Notes

Sandra Hill

45207

#961-9115

3 She-mat
entered home w/ gun
money for drugs
tied her at daylight up.

10-18-66

290-20-5502

loaded up nicks

Hair, blood, skin. didn't match. — Jimmy 13,

Met lady earlier

She can't ID anyone.

— O'Connor

Cont Date
29th April

CA Told Retina on type, 2 in there,
drug deal gone bad.

Told by. from 9:00-10:00 am

9:00 pm robbery.

Out shopping for body

— Kelly Powell

Tri-County Mall

Receipt for that. —

New

Robbery - 85

Traffic - 91

Auto Theft - 85



BRYAN R. PERKINS
Attorney at Law

Provident Bank Building
23 East Seventh Street
Suite 1116
Cincinnati, Ohio 45202

Telephone (513) 929-4449
fax (513) 929-4530

April 4, 1996

Mr. Bruce Woods #341825
Hamilton County Justice Center
1000 Sycamore Street
Cincinnati, Ohio 45202

Re: State of Ohio v. Bruce Woods, Case No. B 96 1386

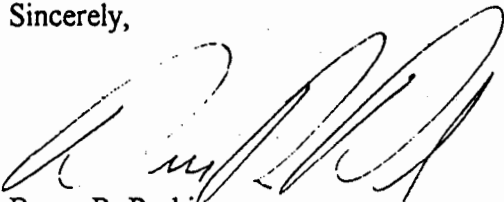
Dear Mr. Woods,

Enclosed please find copies of the discovery motions which I filed on your behalf.
Please retain these for your records.

Once the Prosecutor responds I will meet with you to discuss their response and
we will frame our defense accordingly.

In the meantime, should you have any questions please feel free to call me

Sincerely,



Bryan R. Perkins
Attorney at Law

Enclosure
BRP/nw



FILED

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION
HAMILTON COUNTY, OHIO

0960545

STATE OF OHIO, : Case No.: B9600345
Plaintiff-Appellee, : (Judge O'Connor)
vs. :
BRUCE WOODS : NOTICE OF APPEAL
Defendant-Appellant :

Notice is hereby given that Dale Lusby, Defendant-Appellant, hereby appeals to the First Appellate Judicial District, from the judgment and sentence of this Court entered on this cause on June 14, 1996.

Respectfully Submitted,

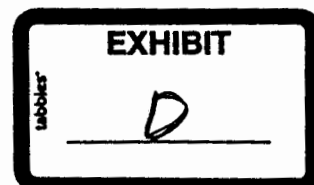
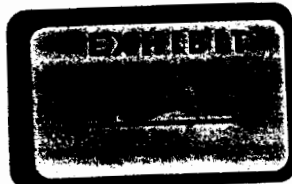
ORIG. COMP. PARTIES, SUMMONS		
() CERT MAIL	() SHERIFF	() WAVE
() PROCESS SERVER	<input checked="" type="checkbox"/> NONE	
CLERKS FEES	TIC	
SECURITY FOR COST		
DEPOSITED BY	61871	
FILING CODE	A-105	

Bryan R. Perkins (0061871)
Attorney for Defendant-Appellant
23 East Seventh Street
Suite 1116
Cincinnati, Ohio 45202
(513)929-4449

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was served upon the Hamilton County Prosecutor's Office by personal service on this ___ day of July, 1996.

Bryan R. Perkins



23

12-11-96 Hamilton County Clerk Of Courts
CASE COST STATEMENT

8:46

Court Code: C Case Number: 96-00545 Last Activity Date: 12-10-96

STATE OF OHIO vs. BRUCE WOODS

Filing Date: 7-12-96

Filing: A105 NOTICE OF APPEAL - CRIMINAL - POVERTY AFFIDAVIT

Current Judge:
Previous Judge:

Assign Date: - -

Disp: EODC ENTRY OF DISMISSAL

Date: 12- 5-96

Referred From Case:
Referred To Case:CA600 Date: 12-10-96
Applied Costs: .00Total Case Credits: \$60.00-
Total Case Debits: \$60.00
Case Balance: \$.00
Accum. Disbursements: \$60.00

Initial Payment Method:

Last Billing Date: - -

Deposit Motion Flag: N/A

P A R T Y R E F E R E N C E

Party Dropped Party # Party Name & Address
Dropped Date Attorney # Attorney Name & Address

N D-0001 BRUCE WOODS

61871 BRYAN R PERKINS
23 E 7TH ST
SUITE 1116
CINCINNATI

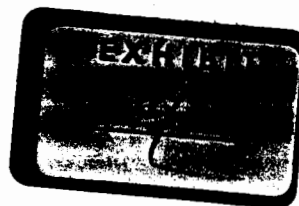
OH 45202

N P-0001 STATE OF OHIO

Z-9996 PARTY WITH NO ADDRESS

D O C K E T E N T R I E S

Dock Nbr	Entry Type	Dock Code	Entry Date	Image Number	Docket Description/ Docket Comment	Amount	Applied
9958	C	BUC1	12-10-96		UNCOLLECTED COSTS	\$60.00-	Yes
9960	D	AEDA	12- 5-96	15	ENTRY DISMISSING APPEAL B960345	\$3.00	Yes
9962	D	COA1	11- 7-96		NOTICE OF FILING OF RECORD EXCLUDING TRANSCRIPT OF PROCEEDINGS-MAILED TO BRYAN R PERKINS AND COUNTY PROSECUTOR		Yes
9964	D	COA1	11- 7-96		NOTICE OF FILING OF RECORD EXCLUDING TRANSCRIPT OF PROCEEDINGS MAILED TO BRYAN R PERKINS AND COUNTY PROSECUTOR		Yes
9966	D	COA2	11- 7-96		TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES FILED		Yes
9968	F	NOJS	9- 5-96		NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.		Yes
9970	D	ARCS	8-30-96	2	REGULAR CALENDAR SCHEDULING ORDER, ENTERED. 11/19/96 RECORD DUE. 01/03/97 APPELLANT'S BRIEF DUE 02/17/97 APPELLEE'S BRIEF DUE	\$3.00	Yes
9972	D	ADSF	8-12-96		DOCKET STATEMENT FILED. B9600345	\$1.00	Yes
9974	F	NOJS	8- 1-96		NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.		Yes
9976	D	EOSC	7-30-96	19	ORDER TO SHOW CAUSE	\$3.00	Yes
9978	D	DDDD	7-12-96		COPY SENT BY ORDINARY MAIL TO HAMILTON COUNTY PROSECUTORS		Yes
9980	D	CCCC	7-12-96		COMMON PLEAS TRIAL COURT # B-9600345		Yes
9984	D	BBBB	7-12-96		NOTICE OF APPEAL FILED.		Yes
9986	D	AAAA	7-12-96		APPEAL - ON QUESTIONS OF LAW		Yes
9988	D	POST	7-12-96		POSTAGE: COST DESK	\$2.00	Yes
9990	D	CCAT	7-12-96		COURT AUTOMATION	\$6.00	Yes



12-11-96 H a m i l t o n C o u n t y C l e r k O f C o u r t s

8:4

D O C K E T E N T R I E S
Court Code: C Case Number: 96-00545

Dock Nbr	Entry Type	Dock Code	Entry Date	Image Number	Docket Description/ Docket Comment	Amount	Applied
9992	D	CLRT	7-12-96		COMPUTER LEGAL RESEARCH	\$3.00	Yes
9994	D	C	7-12-96		COURT INDEX: TAXED IN COST	\$14.00	Yes
9996	D	CLKP	7-12-96		CLERK FEE FOR EACH APPEAL	\$25.00	Yes
9998	P	NDRP	7-12-96		NO DEPOSIT REQUIRED-POV.AFF. BRUCE WOODS		Yes

** Case Balance **** Case Balance **** Case Balance ** ==> \$0.00

Total Deposits: \$0.00
 Total Costs: \$60.00
 Total Credits: \$60.00-
 Total Money Out: \$0.00

Unapplied Deposits: \$0.00
 Unapplied Costs: \$0.00

Account	Account Name	Amount	Applied
2000-0132	COURT INDEX	14.00	14.00
2000-0211	CLERK FEES	35.00	35.00
2000-0278	COMPUTERIZED LEGAL RESEARCH	3.00	3.00
2000-0279	COURT AUTOMATION	6.00	6.00
2000-0752	POSTAGE	2.00	2.00
8001-0001	UNCOLLECTED COSTS - POVERTY	60.00 CR	60.00 C
		.00	.00



Hamilton County Clerk of Courts

Schedules

Document Listing

APPEARANCE DOCKET

C 9600545

Attorney - Plaintiff

Attorney - Defendant

BRYAN R PERKINS

61871

Judge -

STATE OF OHIO vs. BRUCE WOODS

Filed: 7/12/1996 A105 - NOTICE OF APPEAL - CRIMINAL - POVERTY AFFIDAVIT

Total Deposits \$.00

Total Costs \$60.00

BRUCE WOODS

Appellant(s)

vs.

STATE OF OHIO

Appellee(s)

IMAGE	DATE	DESCRIPTION	AMOUNT
	7/12/1996	NO DEPOSIT REQUIRED-POV.AFF. BRUCE WOODS	
	7/12/1996	APPEAL - ON QUESTIONS OF LAW	
	7/12/1996	NOTICE OF APPEAL FILED.	
	7/12/1996	COMMON PLEAS TRIAL COURT # B-9600345	
	7/12/1996	COPY SENT BY ORDINARY MAIL TO HAMILTON COUNTY PROSECUTORS	
19	7/30/1996	ORDER TO SHOW CAUSE	
	8/1/1996	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
	8/12/1996	DOCKET STATEMENT FILED. B9600345	
2	8/30/1996	REGULAR CALENDAR SCHEDULING ORDER, ENTERED. 11/19/96 RECORD DUE. 01/03/97 APPELLANT'S BRIEF DUE02/17/97 APPELLEE'S BRIEF DUE	
	9/5/1996	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
	11/7/1996	TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES FILED	
	11/7/1996	NOTICE OF FILING OF RECORD EXCLUDING TRANSCRIPT OF PROCEEDINGS MAILED TO BRYAN R PERKINS AND COUNTY PROSECUTOR	
	11/7/1996	NOTICE OF FILING OF RECORD EXCLUDING TRANSCRIPT OF PROCEEDINGS MAILED TO BRYAN	

R PERKINS AND COUNTY PROSECUTOR

15 12/5/1996 ENTRY DISMISSING APPEAL B960345

12/13/1996 NOTICE OF ORDER OR JUDGMENT SENT BY
ORDINARY MAIL TO ALL PARTIES REQUIRED BY
LAW.

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO

:

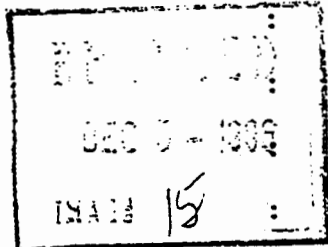
APPEAL NO: C-960545
TRIAL NO. B-9600345

Appellee,

vs.

BRUCE WOODS

Appellant.



ENTRY DISMISSING APPEAL

This cause came on to be considered upon the appeal from the trial court, and

The Court, being fully advised, sua sponte dismisses the appeal for failure of the appellant to show good cause why he has failed to comply with the Ohio Rules of Appellate Procedure, to wit: the transcript of proceedings was due to be filed on 11/19/96.

It is further Ordered that a certified copy of this judgment shall constitute the mandate to the trial court pursuant to Rule 27, Ohio Rules of Appellate Procedure.

TO THE CLERK:

(COPIES SENT TO ALL COUNSEL)

ENTER UPON THE JOURNAL OF

THE COURT

12/5/96

PER ORDER OF THE COURT.

BY:

William D. Hoffman

Presiding Judge

Criminal Docket Statement

Rev. 3/95

(Must Be Typed and Filed In Duplicate and Served On Opposing Counsel)

1. Case Caption

State of Ohio, Plaintiff

vs.

Bruce Woods, Defendant

2. Appeal No. C960545

3. Trial No. B9600345

4. Trial Judge O'Connor

5. Related Appeals:

6. Date of Judgment/
Order Appealed From: June 14, 1996

7. Date Appeal Filed: July 12, 1996

FILED
COURT OF APPEALS
AUG 12 1996

8. Counsel For Appellant

Bryan R. Perkins (006187)
23 East Seventh Street
Suite 1116
Cincinnati, Ohio 45202
(513) 929-4449

9. Counsel For Appellee

JAMES C. CASSIDY
CLERK OF COURTS
HAMILTON COUNTY
Joseph T. Deters (0012084)
914 Main Street
Suite 200
Cincinnati, Ohio 45202
(513) 632-5766

10 (B). Criminal Status

Counsel was appointed for trial.

Yes

No

Counsel was appointed for appeal.

Yes

No

Stay was granted by trial court.

Yes

No

Length of sentence

Counsel will make a reasonable effort to contact the client prior to
merit hearing so that counsel can advise the court of the client's
status and desire to proceed with the appeal.

Yes No

If answered no, please explain:

11. Record

There will be a partial transcript of proceedings filed. Yes

The parts to be ordered are:

There will be a complete transcript of proceedings filed. Yes

If either of the above are applicable the court reporter's certification below must be completed.

If neither of the above are applicable then one of the following must be circled:

There will be a statement filed pursuant to App. R. 9(C). Yes

There will be an agreed statement filed pursuant to App. R. 9(D). Yes

There is no transcript, statement or agreed statement to be filed. Yes

Circling any of the above three will be deemed sufficient compliance with App. R. 9(C) and Local Rule 5



12. Court Reporter's Certification

The transcript as ordered consists of approximately 600 pages and pursuant to Local Rule 10, the transcript will
be prepared and ready for filing on 11-12-96 pursuant to recovery deposit of

#7200 by 4-12-96

Date: 8-12-96

Signature

J. J. McCutcheon

13. Brief

Upon the filing of the complete record I request 60 days to file the brief and assignments of error.

14. Nature of the Appeal

Please Check All That Apply and Specify Whenever Space Is Provided:

☐ Arson☐ Assault☐ Attempt☐ Automobile Offense☒ Burglary☐ Complicity, Conspiracy☐ Drug Offense☐ DUI☒ Kidnapping☐ Murder☐ Death Penalty☐ Post Conviction☐ Probation☒ Robbery☐ Sex Offense☐ Theft Offense☐ Traffic Offense☐ Weapons Offense☐ Other

15. Probable Issues for Review:

☐ Counsel was Recently Appointed and is Not Yet Able to Identify Probable Issue(s) For Review.

---OR---

Please Check All That Apply and Specify Whenever Space Is Provided:

☒ Allied Offenses☐ Constitutional Law☐ Counsel - Effective Assistance☐ Crim. R. 11☐ Expungement☐ ID/Photos☐ Indictment/Complaint☐ Lesser Included Offenses☐ Procedure/Rules☐ Probation☐ Prosecutor☐ Search and Seizure☐ Arrest☐ Miranda☐ Warrant☐ Other:☐ Sentencing☐ Speedy Trial☒ Sufficient Evidence/Crim. R. 29

Trial Matters

☒ Evidence☐ Expert Witnesses☐ Jury Instructions☐ Witnesses☐ Other:☒ Weight of Evidence☐ Other

EXHIBIT

5

16. Cases and/or Statutes to be Discussed:

17. Certificate of Service

I certify that I have mailed or otherwise delivered a copy of this docket statement to all counsel of record or the
parties if unrepresented.

Date: 8/12/96

Signature:

HAMILTON COUNTY COMMON PLEAS COURT
ROOM 315, HAMILTON COUNTY COURTHOUSE
1000 MAIN STREET
CINCINNATI, OHIO 45202

IN ACCORDANCE WITH APPELLATE RULE 30(A),
YOU ARE HEREBY GIVEN NOTICE THAT THE
FOLLOWING ORDER OR JUDGMENT HAS BEEN
JOURNALIZED ON THE 30TH DAY OF
AUGUST, 1996, IMAGE NUMBER 2.

REGULAR CALENDAR
SCHEDULING ORDER, ENTERED.
11/19/96 RECORD DUE.
01/03/97 APPELLANT'S BRIEF DUE
02/17/97 APPELLEE'S BRIEF DUE

Case No. C 96-00545
STATE OF OHIO
- v s -
BRUCE WOODS

STATE OF OHIO

NOTICE IS SENT BY ORDINARY MAIL TO
ALL PARTIES REQUIRED BY LAW.
Deputy: David P. Gilb
JAMES CISSELL
CLERK OF COURTS

HAMILTON COUNTY COMMON PLEAS COURT
ROOM 315, HAMILTON COUNTY COURTHOUSE
1000 MAIN STREET
CINCINNATI, OHIO 45202

IN ACCORDANCE WITH APPELLATE RULE 30(A),
YOU ARE HEREBY GIVEN NOTICE THAT THE
FOLLOWING ORDER OR JUDGMENT HAS BEEN
JOURNALIZED ON THE 30TH DAY OF
JULY, 1996, IMAGE NUMBER 19.

ORDER TO SHOW CAUSE

NOTICE IS SENT BY ORDINARY MAIL TO
ALL PARTIES REQUIRED BY LAW.
Deputy: David P. Gilb
JAMES CISSELL
CLERK OF COURTS

Case No. C 96-00545
STATE OF OHIO
- v s -
BRUCE WOODS

STATE OF OHIO



HAMILTON COUNTY COMMON PLEAS COURT
ROOM 315, HAMILTON COUNTY COURTHOUSE
1000 MAIN STREET
CINCINNATI, OHIO 45202

IN ACCORDANCE WITH APPELLATE RULE 10(A),
YOU ARE HEREBY GIVEN NOTICE THAT THE
FOLLOWING ORDER OR JUDGMENT HAS BEEN
JOURNALIZED ON THE 5TH DAY OF
DECEMBER, 1996. IMAGE NUMBER 15.

ENTRY DISMISSING APPEAL
8960345

NOTICE IS SENT BY ORDINARY MAIL TO
ALL PARTIES REQUIRED BY LAW.
Deputy: David P. Glibb
JAMES CISELL
CLERK OF COURTS

CASE NO. C 94-00545
STATE OF OHIO
- V -
BRUCE WOODS

STATE OF OHIO